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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 90 of)
the Commission's Rules to)
Facilitate Future Develop-)
ment of SMR Systems in the)
800 MHz Frequency Band)

PR Docket No. 93-144

RM-8117, RM-8029, RM-8030

To: The Commission

COMMENTS
OF THE
COUNCIL OF INDEPENDENT COMMUNICATION SUPPLIERS

The Council of Independent Communication Suppliers ("CICS"), pursuant to the Federal Communications Commission's Notice of Proposed Rule Making in the above-referenced matter, hereby respectfully submits these Comments responsive to the Commission's proposal to implement rules relating to the development of wide-area Specialized Mobile Radio ("SMR") systems in the 800 MHz band.¹

I. PRELIMINARY STATEMENT

1. The Council of Independent Communication Suppliers is an unincorporated association of entities engaged in serving the needs of private radio eligibles, particularly those located in small and

¹ Notice of Proposed Rule Making (FCC 93-257), adopted May 13, 1993, released June 9, 1993.

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rural communities throughout the United States. CICS' membership is open to SMR operators, radio dealers, equipment suppliers, and consultants. CICS was formed to provide these entities a voice in the policy-making process governing use of the electromagnetic spectrum, especially spectrum allocated to the private land mobile radio services. CICS is an independent membership market council of the Industrial Telecommunications Association, Inc. ("ITA").

II. BACKGROUND

2. In this proceeding, the Commission has proposed rules designed to facilitate the development of wide-area Specialized Mobile Radio systems using frequencies in the bands 806-821/851-866 MHz. The Commission bases its proposal on a concept referred to as "Expanded Mobile Service Provider" ("EMSP") licensing. The FCC proposes to define EMSP service areas according to either the 47 Rand-McNally Major Trading Areas ("MTAs") or the 487 Rand McNally Basic Trading Areas ("BTAs") plus Puerto Rico.

III. COMMENTS

3. CICS's comments in the instant proceeding will parallel the views which it expressed in response to the Commission's recent proposal in PR Docket No. 89-553.² In that proceeding,

² First Report and Order and Further Notice of Proposed Rule

CICS emphasized the need to ensure that SMR systems retain their local identity. CICS urged the Commission to preserve its commitment to serving the needs of users at the local level.

4. With respect to 800 MHz systems, CICS also supports an approach which will ensure that SMR licensees remain committed to serving the needs of subscribers at the local level. Either the 47 Major Trading Areas or the 487 Rand McNally Basic Trading Areas would likely ensure an adequate level of attention to needs at the local level. Of the two approaches, however, licensing systems according to the 487 Rand McNally Basic Trading Areas would seem to be more consistent with the existing licensing patterns for 800 MHz. CICS believes that basing EMSP licensing on the Basic Trading Areas would permit a greater percentage of existing 800 MHz SMR licensees to participate in the wide-area process. Accordingly, CICS favors licensing EMSP systems on the basis of the 487 Basic Trading Areas.

5. CICS is of the opinion that the Commission must enact measures that will ensure a degree of sincerity and commitment on the part of EMSP licensees. There must be, therefore, some form of meaningful rules designed to ensure that wide-area systems are constructed on a defined schedule. CICS supports a requirement that EMSP licensees would have to meet specified service area commitments, i.e., requiring wide-area licensees to serve either

80 percent of the land area in the region or 80 percent of the population of the licensed region within five years of licensing.

6. CICS supports the use of performance bonds or escrow accounts for wide-area systems. CICS believes that the Commission's foremost priority, when licensing EMSP systems, must be protecting the public interest. CICS believes that licensees of wide-area systems must take their responsibility as "stewards" of the public's spectrum seriously. Requiring wide-area licensees to post a performance bond or establish an escrow account is one way to accomplish this objective.

7. CICS is troubled by the Commission's proposal to abandon the use of 800 MHz waiting lists without extending to waiting list applicants any corresponding rights to participate in the first round of filing for EMSP systems. CICS's concern is not so much with those waiting list applicants who are included in the first group under Section 90.611(d) as with those applicants in the second group, i.e., applicants seeking to establish new systems.³ Waiting list applicants have dutifully

³ It seems clear, under the Commission's proposal, that waiting list applicants who are in the first group will be able to qualify for the initial round of licensing by virtue of their status as existing licensees of trunked systems that have been constructed, placed in operation, and are awaiting assignment of additional channels. CICS's intent is to ensure fundamental fairness not only for those waiting list applicants who operate fully loaded trunked systems but also for waiting list applicants

complied with the Commission's application requirements, including the obligation to file an annual fee of \$35 per application under Section 1.1102 for the privilege of remaining on the waiting list.

8. Under the Commission's proposal, waiting list applicants who are not currently operating systems in the waiting list area would be excluded from the initial round of licensing. CICS believes that these applicants have earned the right to participate in the initial EMSP filing window.⁴ For this reason, CICS strongly urges the Commission to extend to all waiting list applicants the opportunity to apply, during the first round of filing, for the BTA or MTA corresponding to the location proposed in each of their waiting list applications.

9. CICS strongly supports the Commission's proposal to require wide-area applicants to submit, with their applications, a frequency coordination study. Given the complexity of wide-area systems, the Commission simply is not in a position to

seeking to establish new systems in an area.

⁴ But for the lack of available channels in their desired area of operation, the vast majority of these waiting list applicants would likely have placed SMR systems in operation before the Commission-established cutoff date of May 13, 1993. These applicants have shown themselves to be ready and willing to establish new SMR systems, if only there had been sufficient channels available.

perform coordination for these applications. Requiring applicants to perform their own frequency coordination will significantly improve processing timeframes. To do otherwise would impose an intolerable burden on FCC resources. CICS believes that EMSP applicants should be required to demonstrate, as part of their filing, adequate protection for all co-channel stations and co-channel applications pending with the Commission.

IV. CONCLUSION

10. CICS favors licensing EMSP systems on the basis of the 487 Basic Trading Areas. CICS believes the Commission should require EMSP licensees to meet specified commitments regarding the extent of service to be provided within five years of licensing. CICS also favors the use of performance bonds for wide-area systems that will be implemented over an extended period.

11. CICS disagrees with the Commission's proposal to terminate the existing 800 MHz waiting lists without ensuring that all waiting list applicants have an opportunity to participate in the initial EMSP filing window. Finally, CICS fully supports the proposal to require EMSP applicants to submit, with their applications, a frequency coordination study showing protection for all co-channel stations and pending applications.

WHEREFORE, THE PREMISES CONSIDERED, the Council of Independent Communication Suppliers respectfully submits these Comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

**COUNCIL OF INDEPENDENT
COMMUNICATION SUPPLIERS**

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